SUPREME COURT, U.S.
FILED
OCT 22 1957
JOHN T. FEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1957.

No. 507.

AMERICAN TRANSIT LINES,

Petitioner,

vs.

RALPH R. SMITH,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

H. GUY HARDY,
LAWRENCE E. STEWART,
Attorneys for Respondent
Ralph R. Smith.

Of Counsel:
McDONALD, HOPKINS, BURKE & HARDY,
National City Bank Building,
Cleveland 14, Ohio.

THE GONG PRINTING CO., CLEVELAND, OHIO—PHONE 1-0000

In the Supreme Court of the United States

OCTOBER TERM, 1957.

No. 507.

AMERICAN TRANSIT LINES,

Petitioner,

vs.

RALPH R. SMITH,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

RESTATEMENT OF QUESTION PRESENTED.

Should this Court review the decision of the Court of Appeals and the law of trip leases in view of the fact that the Court of Appeals affirmed the District Court decision based on its finding of fact that no trip lease was involved?

STATEMENT.

The decision of the Court of Appeals is not in conflict with the decision of any other Court of Appeals, and it does not involve any question of law justifying review by this Court.

The basis of the Petitioner's argument for review is that the collision occurred after a trip under a so-called trip lease had ended. The entire case of the Petitioner is predicated upon the false assumption of the existence of a trip lease; the trial court found as a fact that no trip lease existed, and the Court of Appeals stated in its opinion (Pet. App. p. 15):

"But no valid trip lease was shown to cover the trip from Hammond to Cleveland. * * * There being no covering trip lease, the District Court correctly relied upon the arrangement and understanding between the parties which evidenced a continued control and direction of Medovic's (the driver) operation by defendant. The cited one-way trip lease cases do not apply."

That the decision of the Court of Appeals is based on a determination of fact by the District Court is clearly stated in the Opinion (Pet. App. 13):

"The trial court found as a fact that by the agreement between defendant and Medovic the tractor trailer was under the direction and control of defendant. * * * The court's conclusion of law was that the tractor trailer outfit involved in the collision was being operated for American Transit Lines at the time of the collision.

"The findings of fact of the District Court * * * are supported by the record."

The instant case is based on a fact question. It is not a decision that this Court should review.

CONCLUSION.

We respectfully submit that the Petitioner's request for certiorari should be denied.

Respectfully submitted,

H. GUY HARDY,
LAWRENCE E. STEWART,
Attorneys for Respondent Ralph R. Smith.

October, 1957.

Of Counsel:
McDONALD, HOPKINS, HOOD & HARDY,
National City Bank Building,
Cleveland 14, Ohio.